

### REMARKS

In reply to the Office Action mailed April 1, 2004, Applicants have amended claims 16, 24, and 31, cancelled claims 24 and 32, and added new claims 43-44. Claims 16-23, 25-31, and 33-44 are presented for examination.

Claims 21-23, 25-29, 31, 34-36, and 38-42 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,898,348 to Chiu *et al.* ("Chiu"). All of the pending claims recite an aqueous emulsion including a polyglyceryl ester selected from triglyceryltetraoleate and triglycerylmonooleate. Nowhere does Chiu teach or suggest an aqueous emulsion including either a triglyceryltetraoleate or triglycerylmonooleate. Rather, the Examiner asserts that a polyglyceryl ester is an equivalent of a polyoxyethylene sorbitan ester, which is disclosed in Chiu.

The recited esters, triglyceryltetraoleate and triglycerylmonooleate, each have a hydrophobic lipophilic balance of about 2 and about 7 respectively. The hydrophobic lipophilic balance of a compound describes its relative solubility to water and oil, which can determine the way a compound behaves in an emulsion, for example the aqueous emulsions of the pending claims. In contrast to the hydrophobic lipophilic balances of triglyceryltetraoleate and triglycerylmonooleate, polyoxyethylene sorbitan ester has a much higher hydrophobic lipophilic balance of 15. Because the claimed compounds have a different hydrophobic lipophilic balance from the polyoxyethylene sorbitan ester disclosed in Chiu, the claimed compounds have different emulsive properties and thus are not equivalent to the polyoxyethylene sorbitan ester. Applicants therefore request that the rejection be reconsidered and withdrawn.

Claims 30, 33, and 37 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Chiu in view of U.S. Patent No. 5,370,914 to Hammer *et al.* ("Hammer"), and claims 24 and 32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Chiu in view of U.S. Patent No. 3,966,632 to Colliopoulos *et al.* ("Colliopoulos"). Each of these claims depend from claim 21, which recites an aqueous emulsion including a triglyceryltetraoleate or triglycerylmonooleate. Neither of the secondary references, Hammer or Colliopoulos, cures the Chiu's deficiency by

teaching or suggesting a triglyceryltetraoleate or triglycerylmonooleate as recited in the pending claims.

Instead, Hammer relates to peelable sausage casings and discloses a list of compounds to be used as emulsifiers, none of which include polyglyceryl esters. (See Col. 3, lines 55-64.) Colliopoulos does not relate to food casing products at all, but rather relates to a vegetable oil emulsion, suggesting that the emulsion can be used in the food industry, for example in the baking industry as shortening for breads and pastries or for the manufacture of mayonnaise. Accordingly, neither the combination of Chiu with Hammer nor the combination of Chiu with Colliopoulos provide the teaching or suggestion of a triglyceryltetraoleate or triglycerylmonooleate as recited in the pending claims. Without such a teaching or suggestion, neither combination renders the claims *prima facie* obvious. Applicants therefore request reconsideration and withdrawal of these rejections.

Enclosed is a check for the petition for extension of time fee. Please apply any other charges or credits to deposit account 06-1050, referencing attorney docket number 15836-037001.

Although the address below is a Boston, MA address, please do not change the correspondence from the Dallas, TX address for this matter.

Respectfully submitted,

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